

Confidential Facts – Round 2 – Sainte Devote Minerale

Sainte Devote managers find this new threat of litigation from the County of Mirabeau highly annoying. First, it has been four years since the County bought the property from the company. Second, the County took the property “as is” for \$1, a great bargain for land that should be redeveloped by now. Third, there is the jurisdiction issue—Sainte Devote could simply stay in Monaco and County might not ever succeed in getting a judgment that is enforceable outside of California. Fourth—the Mine site is a historic sore point with company officials—the company never made any profits at the site, always losing cash, year by year. Its ox gored, the company finally had to call it quits; the last thing it wants now is to have to throw more good money after bad. Nevertheless, the company is busy conducting ongoing mining activities around the world, it wants to stay focused on its core business, and not get mired down in time-consuming and expensive litigation. For that reason alone, it is willing to negotiate with the County.

Jurisdiction

Sainte Devote is a Monaco-based company. It has no offices anywhere in the United States. It operated in California through its subsidiary, Cal-Sainte Devote. The parent company, Sainte Devote Minerale, has never done business in California, and maintains no offices in California. Once mining ceased, Cal-Sainte Devote dissolved. You can play this trump card at any time in the negotiations, however, doing so will not result in any finality for the company and will certainly result in expensive litigation, costing potentially millions of dollars.

In addition, the gold market has gone back through the roof and you are in the market for a new mine. You are very interested in a piece of gold-bearing property owned by the County, known as the Lucky Strike. Your mining division got its hands on some historic records about the Lucky Strike property and those records show it has potentially significant ore reserves. Your people have appraised it at up to \$ 10 million.

You suspect that the County is probably not aware of the true value of the property because of its limited resources. You recognize that negotiating about the Lucky Strike property will likely kill your jurisdiction argument, but you can try to downplay the impact of a California property purchase by arguing you will do it through a holding company just like you did before. Try to get the County to sell you the property as part of a package deal. Get the lowest price possible.

As Is Purchase

Like jurisdiction, the “as is” purchase language is a great trump card for Sainte Devote. In the end, it may well control and Sainte Devote might walk away from any liability. On the other hand, a court might completely ignore the “as is” language and impose liability on Sainte-Devote because of its conduct as the mining company. If you stick too hard to the “as is” purchase language, you might not reach any agreement with the County and the negotiation would be a failure.

Allocation

Sainte Devote expects that the County will want the company to agree to a percentage allocation of liability for all past and future costs. Sainte Devote, however, is highly suspicious of the

County's \$17 million future cost estimate. Costs could far exceed \$17 million if some unknown issue arises. Based on its significant mining experience, Sainte Devote thinks total site remediation costs are more likely to reach \$30 million. It does NOT want to agree to an open ended percentage of liability, unless that is an overall smaller percentage—40 to 60% maximum.

Cash Release

What Sainte Devote really prefers is a one time cash payment, with a broad release of all liability for the site. Sainte Devote is willing to pay more now to end its involvement with the site for all time. Of course, it is not willing to just write the County a check for \$20 million, that would be a complete capitulation. Company officials are willing to pay \$13 to \$16 million for a complete site release. A walk away, never to hear from the County again. An alternative would be to pay less now, but still agree to a fixed amount, with a potential reopener clause in the event that future costs exceed the existing predictions. Sainte Devote is not really interested in this option, because of future unpredictability of costs, but may go along with this for a smaller payment, in the range of \$11 to \$14 million.

Ability to Pay

Sainte Devote will argue that it lost lots of money on this mine site, and therefore its ability to pay is limited, however, the company is doing well elsewhere in the world, and writing a large check is something that it can afford.